

SENATE BILL 1871

By Herron

AN ACT to enact the "Substance Abuse and Crime Prevention Act of 2005" and to permit the creation of drug courts in each judicial district, according to certain procedures, eligibility requirements, and other terms and conditions for the treatment of drug dependent persons who commit nonviolent criminal offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as "The Substance Abuse and Crime Prevention Act of 2005."

SECTION 2.

(a) As used in this act, unless the context otherwise requires:

(1) "Controlled substance" means a controlled substance as defined in Tennessee Code Annotated, Section 39-17-402(4);

(2) "Criminal case record" means the documents describing the circumstances and persons allegedly involved in a criminal offense, which may contain the name, address, social security number, date of birth, and other pertinent information about the arrestee, including the incident report, arrest report, or any other document from a law enforcement agency typically used in that jurisdiction to record an arrest for a criminal offense;

(3) "Currently accused" means arrested for or formally charged with the commission of a criminal offense, proceedings related to which are ongoing at the present time;

(4) "Deadly weapon" means a deadly weapon as defined in Tennessee Code Annotated, Section 39-11-106(a)(5);

(5) "Defendant" means a person arrested, either with or without warrant, and accused of a criminal offense, as well as a person charged by an information or capias;

(6) "Drug court program" means a program that is established pursuant to Section 4 of this act by the presiding judge of a judicial district in consultation with the district attorney general for the purpose of prosecuting, adjudicating, and treating drug dependent persons who meet the terms and conditions for entry into the program that are developed and promulgated by the presiding judge;

(7) "Drug dependent person" means a person, regardless of age, who is using marijuana, narcotic drugs, or other controlled substances and who is in a state of psychological or physical dependence, or both, arising from the use of that substance;

(8) "Drug paraphernalia" means drug paraphernalia as defined in Tennessee Code Annotated, Section 39-17-402(12);

(9) "Marijuana" means marijuana as defined in Tennessee Code Annotated, Section 39-17-402(15);

(10) "Narcotic drug" means a narcotic drug as defined in Tennessee Code Annotated, Section 39-17-402(16);

(11) "Nonviolent criminal offense" means any criminal offense except those that, when committed, would make a defendant ineligible for entry into the drug court program pursuant to Section 4(g) of this act;

(12) "Physical dependence" means a physiological state of adaptation to marijuana, narcotic drugs, or other controlled substances, the absence of which produces symptoms or other indicia of withdrawal;

(13) "Potentially eligible defendant" means a defendant who appears eligible for the drug court program, pursuant to the provisions of Section 4 or other provisions promulgated by the presiding judge, but is not yet found eligible by the court under the requirements of this act;

(14) "Presiding judge" means the presiding judge of each judicial district selected pursuant to Tennessee Code Annotated, Section 16-2-509;

(15) "Psychological dependence" means a condition in which marijuana, narcotic drugs, or other controlled substances, produce a satisfied feeling or state of mind as well as a psychic drive requiring continuous administration of the substance to produce pleasure or avoid discomfort;

(16) "Public inspection" means the personal inspection by any citizen of Tennessee of all state, county, and municipal records as prescribed in Tennessee Code Annotated, Section 10-7-503(a);

(17) "Serious bodily injury" means serious bodily injury as defined in Tennessee Code Annotated, Section 39-11-106(a)(34); and

(18) "Use of a deadly weapon" means the active employment of a deadly weapon, including, but not limited to, brandishing, displaying, bartering, striking with, or discharging or attempting to discharge a deadly weapon, except the term does not encompass mere possession or storage of a deadly weapon.

(b) The definition of a term in subsection (a) of this section applies to each grammatical variation of the term.

SECTION 3. It is the intent of the general assembly and the purpose of this act, that:

(a) The public policy of this state is declared to be that courts may establish drug court programs to rehabilitate drug dependent persons who are charged with nonviolent criminal offenses, including criminal attempt, solicitation, criminal conspiracy, or facilitation of a felony, in the most efficient manner consistent with justice, sound economy, and public welfare.

(b) A drug court program shall operate for the prevention of crime, the promotion of the public welfare, and the improvement of the health and safety of citizens of this state.

(c) A court is encouraged to construe a drug court program established pursuant to this act as consistent to the policy declared in this section.

SECTION 4.

(a) The presiding judge of each judicial district may establish a drug court program as defined in Section 2(6) of this act.

(b) This section does not prohibit the presiding judge of the judicial district from establishing a drug court program with procedures, as well as terms and conditions, other than as defined in Section 2(6) of this act, except the ineligibility requirements of subsection (g) of this section are mandatory. Other terms and conditions are permitted, including, but not limited to, requiring a defendant to participate in a drug court program subsequent to the entry of judgment of guilt and sentencing. The presiding judge may promulgate uniform rules and may make special orders or rules as necessary. The provisions of this act do not affect a drug court program established prior to the effective

date of this act, except the ineligibility requirements of subsection (g) of this section are mandatory on all drug court programs in this state.

(c) Cases assigned to the drug court program may consist of defendants who are drug dependent persons and who are charged with a nonviolent criminal offense, including criminal attempt, solicitation, criminal conspiracy, or facilitation of a felony.

(d) A defendant may not be admitted into the drug court program prior to a guilty plea or a trial without the agreement of the court and the district attorney general.

(e) When a drug court program is established:

(1) The arresting officer shall file the criminal case record for a potentially eligible defendant with the district attorney general within seven (7) days of the arrest;

(2) A potentially eligible defendant, who consents to participation in the drug court program, shall agree in writing to waive the preliminary examination prescribed by law;

(3) A potentially eligible defendant, who consents to participation in the drug court program, shall waive the right to be tried upon presentment or indictment and shall consent to prosecution by information pursuant to Tennessee Code Annotated, Section 40-3-103;

(4) The waiver under subdivision (3) of this subsection is effective unless the potentially eligible defendant is denied admittance into the drug court program, whereupon the defendant may assert the right to be tried upon presentment or indictment;

(5) The district attorney general, who consents to a potentially eligible defendant's participation in the drug court program, shall file an information in the case within twenty-one (21) days of receipt of a potentially eligible

defendant's written waivers, and the information may be amended as necessary; and

(6) The court shall dismiss without prejudice the information when a potentially eligible defendant is denied admittance into the drug court program.

(f) Any criminal case assigned to the drug court program that was filed and processed in the manner typically used in the jurisdiction shall be cross-referenced to a drug court program case file by the court clerk. The originating criminal case file shall remain open to public inspection pursuant to Tennessee Code Annotated, Section 10-7-503(a). The court shall determine what information, documents, or pleadings are to be retained in the drug court program case file. The drug court program case file is not subject to public inspection pursuant to Tennessee Code Annotated, Section 10-7-503(a). If a defendant is terminated from the drug court program pursuant to subsection (j) of this section, the drug court program case file shall be made part of and returned to the originating criminal case file open to public inspection.

(g) A defendant is not eligible for entry into the drug court program pursuant to subsections (i) and (k) of this section if any of the following applies:

(1) The defendant has been convicted of any of the following offenses committed in this state or any offense committed outside this state which, if committed in this state, would constitute one of the following offenses:

(A) First degree murder, as prescribed in Tennessee Code Annotated, Section 39-13-202;

(B) Second degree murder, as prescribed in Tennessee Code Annotated, Section 39-13-210;

(C) Voluntary manslaughter, as prescribed in Tennessee Code Annotated, Section 39-13-211;

(D) Aggravated assault, as prescribed in Tennessee Code Annotated, Section 39-13-102(a);

(E) Aggravated child abuse or aggravated child neglect, as prescribed in Tennessee Code Annotated, Section 39-15-402(a);

(F) Aggravated arson, as prescribed in Tennessee Code Annotated, Section 39-14-302;

(G) Aggravated robbery, as prescribed in Tennessee Code Annotated, Section 39-13-402, or especially aggravated robbery, as prescribed in Tennessee Code Annotated, Section 39-13-403;

(H) Carjacking, as prescribed in Tennessee Code Annotated, Section 39-13-404;

(I) Aggravated burglary, as prescribed in Tennessee Code Annotated, Section 39-14-403;

(J) Aggravated kidnapping, as prescribed in Tennessee Code Annotated, Section 39-13-304, or especially aggravated kidnapping, as prescribed in Tennessee Code Annotated, Section 39-13-305;

(K) Any criminal attempt, as prescribed in Tennessee Code Annotated, Section 39-12-101, solicitation, as prescribed in Tennessee Code Annotated, Section 39-12-102, or criminal conspiracy, as prescribed in Tennessee Code Annotated, Section 39-12-103, involving the commission of a criminal offense listed in this subsection; or

(L) Facilitation of a felony listed in this subsection, as prescribed in Tennessee Code Annotated, Section 39-11-403.

(2) The defendant has been convicted of any of the following sexual offenses committed in this state or any offense committed outside this state which, if committed in this state, would constitute any of the following sexual offenses:

(A) Aggravated rape, as prescribed in Tennessee Code Annotated, Section 39-13-502;

(B) Rape, as prescribed in Tennessee Code Annotated, Section 39-13-503;

(C) Aggravated sexual battery, as prescribed in Tennessee Code Annotated, Section 39-13-504;

(D) Statutory rape, as prescribed in Tennessee Code Annotated, Section 39-13-506;

(E) Spousal rape, as prescribed in Tennessee Code Annotated, Section 39-13-507(b);

(F) Aggravated spousal rape, as prescribed in Tennessee Code Annotated, Section 39-13-507(c);

(G) Rape of a child, as prescribed in Tennessee Code Annotated, Section 39-13-522;

(H) Sexual battery by an authority figure, as prescribed in Tennessee Code Annotated, Section 39-13-527;

(I) Solicitation of a minor, as prescribed in Tennessee Code Annotated, Section 39-13-528;



(J) Any criminal attempt, as prescribed in Tennessee Code Annotated, Section 39-12-101, solicitation, as prescribed in Tennessee Code Annotated, Section 39-12-102, or criminal conspiracy, as prescribed in Tennessee Code Annotated, Section 39-12-103, involving the commission of a criminal offense listed in this subsection; or

(K) Facilitation of a felony listed in this subsection, as prescribed in Tennessee Code Annotated, Section 39-11-403.

(3) The defendant has been convicted of a criminal offense involving the use of a deadly weapon or the intentional or knowing infliction of serious bodily injury.

(4) The defendant is currently accused of a criminal offense involving the use of a deadly weapon or the intentional or knowing infliction of serious bodily injury.

(5) The defendant has completed or previously been terminated from a drug court program other than one entered into as a minor.

(h) For the purposes of subsection (g) of this section, when the conviction occurred is irrelevant.

(i) The following procedures apply to a defendant who is found eligible for participation in the drug court program:

(1) The defendant shall be found guilty of the criminal offense upon a plea;

(2) Notwithstanding any law to the contrary, the court, without pronouncing judgment on the plea, shall defer further proceedings and place the defendant on probation;

(3) The court may not enter a deferred judgment nor suspend the sentence;

(4) The terms and conditions of probation shall provide for participation in the drug court program; and

(5) The terms and conditions of probation may include any other requirements that the court deems appropriate, including the imposition of a fine, restitution, payment of fees, or other obligations as provided by law.

(j) If the defendant is placed on probation pursuant to subsection (i) of this section and the defendant violates a term or condition of probation, the court may terminate the defendant's participation in the drug court program, revoke the probation, pronounce judgment on the plea, and sentence the defendant as provided by law.

(k) If the defendant is found guilty of a criminal offense listed in subsection (l) of this section upon a plea and is placed on probation pursuant to subsection (i) of this section, on fulfillment of the terms and conditions of probation, the court may discharge the defendant and dismiss the proceedings against the defendant or may dispose of the case as provided by law.

(l) A defendant of any age is eligible for dismissal of proceedings as provided in subsection (k) of this section if the defendant is a drug dependent person currently accused or convicted of any of the following offenses:

(1) Possession of a controlled substance, including narcotic drugs, as prescribed in Tennessee Code Annotated, Section 39-17-417;

(2) Simple possession of a controlled substance not obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in

the course of professional practice, as prescribed in Tennessee Code Annotated, Section 39-17-418;

(3) Simple possession of a small amount of marijuana not in excess of one-half (1/2) ounce (14.175 grams), as prescribed in Tennessee Code Annotated, Section 39-17-418;

(4) Use, or possession with intent to use, drug paraphernalia, as prescribed in Tennessee Code Annotated, Section 39-17-425(a);

(5) Any criminal attempt, as prescribed in Tennessee Code Annotated, Section 39-12-101, solicitation, as prescribed in Tennessee Code Annotated, Section 39-12-102, or criminal conspiracy, as prescribed in Tennessee Code Annotated, Section 39-12-103, involving the commission of a criminal offense listed in this subsection; or

(6) Facilitation of a felony listed in this subsection, as prescribed in Tennessee Code Annotated, Section 39-11-403.

(m) If the defendant is placed on probation pursuant to subsection (i) of this section and the defendant fails to fulfill the terms and conditions of probation, the court shall pronounce judgment upon the guilty plea and sentence the defendant as provided by law.

(n) If a defendant does not consent to participation in the drug court program, the defendant may be prosecuted as provided by law.

SECTION 5. The provisions of this act do not confer on any defendant a right or entitlement to participate in a drug court program.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect July 1, 2005, the public welfare requiring it.